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FOLEY & LARDNER  
P.O. BOX 80278  
SAN DIEGO, CA 92138-0278

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**OFFICE OF PETITIONS**

In re Application of :  
Ronald M. Evans :  
Application No. 09/840,008 : DECISION DISMISSING PETITION  
Filed: April 20, 2001 : UNDER 37 CFR 1.137(b)  
Attorney Docket No. SALK2270-4 :  
:

This is a decision on the petition, filed August 14, 2003, under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as MOOT.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on April 16, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on January 4, 2002.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen month publication country. Therefore, since receipt in the USPTO of the request to rescind prior to the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned, for the reason stated above, no petition fee is being charged to Counsel's deposit account as authorized.

This application is being forwarded to Technology Center AU 1632 for consideration of the amendment filed June 30, 2003.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-9220.

*Sherry D. Brinkley*

Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Conferee: Frances M. Hicks *fjh*  
Lead, Petitions Examiner